

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE: AREDIA & ZOMETA
PRODUCTS LIABILITY
LITIGATION
Civil Case # 3-06-01760
(Internal use only)
June 29, 2006

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOE B. BROWN

APPEARANCES:

For the Plaintiffs: Fred Dulin Kelly,
C. Patrick Flynn,
Bart T. Valad,
John Vecchione,
Daniel A. Osborn,
Russel H. Beatie,
John O. Threadgill,
Michael K. Radford,
Robert W. Briley &
Robert G. Germany,
Attorneys at Law

For the Defendants: Katharine R. Latimer &
Heather A. Pigman,
Attorneys at Law

Official Court Reporter: John W. Tummel, RPR
801 Broadway, Rm. A-839
Nashville, Tn. 37203

1 THE COURT: All right. Well, I guess
2 this is our first meeting in what will probably be
3 several. Let me kind of make sure I have -- the role of
4 the defendant is pretty easy. You two are over there.
5 The plaintiffs side, I have got the pleadings from the
6 three groups.

7 You all indicated you represented, I
8 think, 66 out of 68. I need to check which two you all
9 are not involved in and see if somebody is here from
10 those two.

11 Can somebody help me out?

12 MR. BRILEY: Rob Briley of the Nashville
13 Bar. I am here in what I believe is the last case
14 removed, Simmons, James and Clarice. It was filed in
15 state court in Maryland.

16 THE COURT: Okay.

17 MR. BRILEY: I believe I am the only one
18 here on that case.

19 THE COURT: Let me see the number of
20 that one.

21 Do you know what number has been
22 assigned here?

23 MR. BRILEY: I believe 0551.

24 THE COURT: Okay.

25 MR. BRILEY: Roy Mason and Pam Diedrich

1 will be primarily responsible for the case.

2 THE COURT: Right now you're not --

3 MR. BRILEY: I am the lone wolf in the
4 corner.

5 MR. KELLY: Your Honor, Dulin Kelly.

6 I want to aid you in the last case. We
7 know that was brought by the Charlie law firm in
8 Oklahoma. We are not able to identify for Your Honor
9 this morning the number of that case.

10 MS. Latimer might but we don't --

11 THE COURT: Okay. As far as I know, I
12 haven't heard anything. I was wanting one attorney
13 for everybody here. I guess they waive their seat at
14 the table.

15 On the defendants' side, do you know
16 which case that is?

17 MS. LATIMER: I believe it is -- I don't
18 have a docket number nor the individual case. I believe
19 it is Ingram, I-n-g-r-a-m.

20 MR. KELLY: She is right. 00394.

21 THE COURT: So, there is no one here
22 representing the plaintiffs in the Ingram case? All
23 right.

24 The other one is the 551 case. We have
25 one case not represented. All right.

1 Let's kind of work our way through this
2 a little bit. This is the first one of these MDLs I
3 have handled. I suspect it will be a little learning
4 experience for everybody.

5 I am an old country boy. I try to cut
6 to the chase sometimes on this and, hopefully, we will
7 all get through it and see where we come out at the
8 end.

9 Let me take a little quick look at what
10 I have as pending motions. Now, one case -- I think
11 it came in a motion to withdraw certain motions, to
12 withdraw certain objections to certain motions. I
13 love the titles on these sometimes. It doesn't really
14 indicate what case it was in.

15 Then I had the motions in the three
16 Nashville cases that were for joinder, to join spouses,
17 substitute parties because of some deaths.

18 I believe we had a telephone call about
19 that one and were hoping to perhaps resolve that. Those
20 are mostly in 16, 18 and 19.

21 MR. GERMANY: Rob Germany.

22 We filed a joint motion with Novartis to
23 withdraw the motions and various objections.

24 THE COURT: That is the one that doesn't
25 have a docket number. I will have to dig it out. I

1 haven't acted on that one yet.

2 MR. GERMANY: I haven't seen an order
3 yet.

4 MS. LATIMER: I don't believe there was
5 an order but we resolved the issues between us. It
6 was all to be resolved by consent. There are some
7 things outstanding yet.

8 THE COURT: This electronic filing and
9 everything, given the number of cases, what I try to do
10 when I see something pending, I want to do something
11 with it because it is real easy with this many motions
12 to kind of have it drop through the cracks.

13 we had a telephone conference.

14 MR. GERMANY: Yes.

15 THE COURT: This motion to withdraw
16 certain motions doesn't have a docket entry. I will
17 have to check with the docket clerk. That was going to
18 resolve a lot of those situations.

19 Part of that was getting the paperwork
20 together to substitute for individuals that had died in
21 the interim.

22 MR. GERMANY: Subject to the Court's
23 approval the joint motion we submitted should resolve
24 all pending issues in the three original Nashville

25 cases.

6

1 THE COURT: Okay. I am sure someone has
2 an extra copy. I am sure it is in the computer. I
3 thought I remembered it but I don't have it in front of
4 me.

5 That took care of the original cases.
6 There was a motion to amend the complaint,
7 to strike. That motion takes care of all that. That
8 was the amended complaint in 16, 18 and 19. That took
9 care of that.

10 On Judge Campbell's rooster there is a
11 motion to dismiss that related to 497. That was pending
12 when it came down here. I believe in that case I
13 allowed an amendment. That has a lot of issues between
14 New Jersey and North Carolina, I think.

15 Is that motion dismissed or is it still
16 valid?

17 MR. VALAD: Bart Valad. Good morning.
18 Our view was in view of Your Honor's
19 granting the motion to amend, the plaintiffs' view is
20 it was likely mooted.

21 THE COURT: I can term that as mooted.
22 Forty eight is the moot.

23 It really looks like now, probably for
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24 the last time in a long time, we don't have much pending
25 as far as motions.

7

1 what we need to do is try to get a
2 scheduling order, initial plan, whatever, and both
3 sides have given me some suggestions that I have gone
4 over. It looks to me like, certainly, they are ideas
5 and matters we should discuss. I know there is some
6 discovery issues that are going to come up.

7 somebody already mentioned one point
8 seven million documents, 450 boxes or so. I know we
9 will get into that.

10 I know also we have some issues that
11 will come up of discovery, how broad it is. We have
12 some class issues.

13 There was some mention on the plaintiffs'
14 side about what Judge Campbell would think about the
15 Fosamax litigation coming down here.

16 I think his view is that is for the MDL
17 and he is not volunteering. If it is assigned that is
18 one thing but he is not volunteering. I think I second
19 him on that.

20 In that connection if the Fosamax, by
21 some stretch, did come down here, I know some of the

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22 plaintiffs' attorneys are involved in that litigation.
23 Is there going to be requests in that
24 case for some monitoring of the class, or something of
25 that nature?

8

1 MR. KELLY: Yes, sir.
2 THE COURT: I don't know if that causes
3 a problem for me. My wife has taken Fosamax for years.
4 I don't know whether that would get me into a conflict
5 or not. It is one of those things. That is just a
6 problem, because that would be a fairly wide class,
7 particularly among older judges or their spouses that
8 may be involved in that. That is a pretty widely taken
9 medication.
10 To what extent that causes a conflict,
11 I don't know. We are not on that bridge yet. I will
12 have to cross that one, maybe. That is something to
13 keep in mind.
14 Judge Campbell is not volunteering.
15 That is a matter for the MDL panel, where they want to
16 put it. I assume they communicate with the judge on
17 that.
18 That will take care of that issue.
19 Now, who wants to go first as to some
20 suggestions?

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21 what I would like to do ideally coming
22 out of here is have a pretty good understanding where
23 we are going with this matter and get discovery underway
24 and take a look at some trial dates.
25 Judge Campbell originally set trial

9

1 dates in the three cases filed in this district, and I
2 think the view was with MDL those dates weren't
3 considered set in stone at this point. He would like
4 to get -- and I intend to get it if I can -- a target
5 trial date the three cases filed here would be set for
6 trial.

7 If there are any other cases where the
8 parties consent to trial here then those could be set.
9 I don't think we need to reach a decision on that
10 today.

11 Clearly at some point some of the cases
12 will have to be tried. I think the view is we might as
13 well try them here first since we will have most of
14 them going at that point.

15 At some point the parties will have to
16 talk about settlement and resolution and whether it
17 needs a couple cases tried.

18 The parties -- it may be they want to

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19 pick one or two or three or four test cases and see
20 what happens.
21 Hopefully the case can be settled at
22 some other point. My multi-district book says try to
23 raise settlement and push it. I will try that at
24 another time. I suspect as we sit here today it is way
25 too early.

10

1 I know the plaintiffs indicated there
2 may be other cases filed. One of the suggestions was
3 that the cases be filed -- an order to direct the cases
4 be filed directly here that would kind of, in effect,
5 bypass the MDL panel.

6 As things get down the road, they can
7 be consented to proceed here or remanded back to a
8 district that has unquestioned venue.

9 I believe you indicated the judge in
10 Louisiana had put down such an order.

11 I would probably like to see a copy of
12 that if we go that way.

13 You indicated a number of state court
14 cases pending in New Jersey; because of lack of
15 diversity is up there.

16 There might be a need to coordinate with
17 state court judges and make sure that we don't have

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18 discovery that is duplicated; what is good here is good
19 there, et cetera.

20 I am certainly more than happy to
21 communicate with state court judges on the matters and
22 coordinate with them to the extent possible. I think
23 that make sense. There is no sense having courts going
24 in different directions. Federal is going to be under
25 MDL here. It seems if we can coordinate as much as we

11

1 can in the state court cases -- from the plaintiffs'
2 side or defendants', do we have some separate counsel
3 separate from here or does the group of three of you got
4 your oars in the water, too?

5 How does that go? Who is kind of the
6 lead spokesman?

7 MR. KELLY: Yes, sir. We don't have any
8 interest, our group, in the New Jersey cases, if that is
9 what Your Honor is asking.

10 THE COURT: Somebody is stepping up.

11 MR. VALAD: Bart Valad again.

12 I currently have claims on behalf of
13 seven plaintiffs pending in New Jersey. Additional
14 claims will be filed in the New Jersey court. At
15 present, three cases with multiple plaintiffs in each

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16 case.

17 The coordination with the state court
18 cases are very important.

19 THE COURT: How far along is the case?
20 Give me a thumbnail where they are.

21 MR. VALAD: Really at the beginning.
22 There have been multiple discussions and some
23 disagreement with Novartis. We have agreed to
24 everything with exception of sharing.

25 Their position is I would need to

12

1 discover from them in three separate cases.

2 I think there will be motions absent
3 something from this Court.

4 THE COURT: Are all the cases assigned
5 to one judge?

6 MR. VALAD: They are three different
7 courts in three different counties.

8 THE COURT: Okay. They will stay that
9 way as far as you know? There may not be a provision
10 with county --

11 MR. VALAD: There has been a motion
12 pending from Novartis to separate out the cases. We
13 are waiting for a ruling.

14 THE COURT: Okay.
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15 MS. LATIMER: Your Honor, to follow-up.
16 There is only --

17 THE COURT: I am sorry. I missed your
18 name the first time.

19 MS. LATIMER: Kate Latimer for Novartis.

20 There are only five cases with a total
21 of eight plaintiffs pending in state court. Those are
22 in New Jersey. There are no other state court actions.

23 Mr. Valad has roughly half the cases and
24 the majority of the plaintiffs there.

25 THE COURT: As a practical matter, I

13

1 assume if they are filed outside New Jersey you would
2 be removing those to federal court?

3 MS. LATIMER: Yes. There only has been
4 one case we had the -- mostly they have been filed in
5 federal court and the doctors, prescribing doctors have
6 not been named as co-defendants.

7 There hasn't been an issue with removals
8 or remands.

9 THE COURT: Okay. Let's start down the
10 road to what we do with the scheduling order and things
11 in this case, confidentiality orders and everything
12 else.

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I don't know whether anyone has a
14 particular plan. I've got, obviously, the submission --
15 conference agenda. I am looking to come out with an
16 order today and getting some stays. We stayed discovery
17 up through today.
18 My proposal is it will be lifted at the
19 end of the day so we can get on with it.
20 MR. KELLY: May I speak to the first
21 problem?
22 THE COURT: Somebody has to start.
23 MR. KELLY: We have looked at the
24 suggested agenda by Novartis.
25 THE COURT: Their's was a little shorter.

14

1 MR. KELLY: Yes. We don't have any
2 particular problems with anything except 1-E.
3 THE COURT: Let me get down to the
4 documents. They are short except for the certificate
5 of service.
6 I am looking at Novartis' docket number
7 64.
8 MR. KELLY: They say they would like to
9 stay discovery of non-class certification discovery
10 during the resolution of the class certification issues.
11 We very much oppose that.

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12 I might tell the Court and Ms. Latimer
13 and her team we are considering what to do with the
14 request for class certification for the personal injury
15 claims, thinking they may not be mature.

16 THE COURT: I will have to say,
17 obviously, that decision is above my pay grade. That
18 is for Judge Campbell.

19 I would be somewhat surprised if you got
20 class certification on the injuries. Those really, to
21 me, are inherently different; different doctors and
22 different treatments. I would be somewhat surprised if
23 you got class certification on the injury part of it.

24 Now, the other class issue that seems to
25 me that is in there is the issue about the dental

15

1 monitoring, or some of that.

2 MR. KELLY: Yes.

3 THE COURT: That may be a horse of a
4 different color.

5 MR. KELLY: I wanted to tell you that,
6 and the team for Novartis right now, we are considering
7 withdrawing that request for class certification.

8 I also want Your Honor to know -- you
9 may know already -- that our group is the only group of

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10 all the plaintiffs that I know of who have asked for
11 class certification of any kind.

12 THE COURT: I kind of looked through,
13 but you were one of the earliest cases.

14 MR. KELLY: That's correct. So it would
15 be, to me, to be unfair to all the other plaintiffs and
16 their counsel to stay discovery of anything except class
17 certification issues as well.

18 We certainly could never address the
19 preemptive issues that Novartis raised without full
20 and complete discovery as well.

21 While I am up here, judge, with regard
22 to discovery, having personally participated in going
23 to Washington and being confronted with 440 banker's
24 boxes of documents, I want to kind of describe them to
25 you.

16

1 They were put in banker boxes stuffed so
2 tightly in there that you had almost had to get a pair
3 of tweezers to get them out.

4 When I asked for the index so we might
5 have a concept of what to look for, they said there
6 wasn't one.

7 I think in any MDL litigation the Court
8 would be interested in having a repository so all

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9 counsel could have equal access. I can't imagine
10 Novartis with 20 plaintiff lawyers coming up there at
11 all times looking for documents.

12 They are on discs, we believe,
13 electronically stored.

14 We believe we should be provided with
15 an index that could be word searched as well.

16 I don't think we can get started
17 anywhere until that has been accomplished in some
18 fashion. Because it is totally unworkable the way it
19 is now.

20 THE COURT: Ms. Latimer, probably the
21 best thing to do is to take it in small chunks.

22 MS. LATIMER: Okay.

23 THE COURT: He has his opening gun there.

24 MS. LATIMER: Let me respond to those
25 chunks.

17

1 Our suggestion that we have a stay of
2 the individually filed cases pending resolution of the
3 class is purely one of efficiency. If in fact there
4 were going to be a class certification ruling which
5 we -- as Your Honor's comments suggested -- we very
6 much believe there could not be a personal injury class

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7 here.

8 If there were all the plaintiffs' whose
9 cases are pending would be included in the class unless
10 they opt out.

11 I didn't want to go through the effort
12 of unnecessary discovery in depositions while that was
13 pending. If they are going to withdraw that request, I
14 don't have any interest in the stay.

15 I don't know how to respond. At the
16 moment there is a request for -- request for a personal
17 injury class pending.

18 THE COURT: I am not too worried about
19 it, quite frankly. It sounds like they might withdraw
20 it.

21 My own view is -- I don't speak for
22 Judge Campbell, obviously, his decision -- but I would
23 be very surprised if it ended up getting granted.

24 It does indicate -- there may be some
25 indication that there is more interest in a class that

18

1 would deal with the dental monitoring issue at a later
2 date. That would involve people, as I understand it at
3 the present time, that don't have active symptoms.

4 That is to me a bit of a different
5 class.

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6 MS. LATIMER: I agree with that
7 completely. To my knowledge that case isn't pending.

8 All the plaintiffs that have cases
9 pending of personal injuries, diagnoses to my
10 knowledge --

11 THE COURT: I thought I read in some of
12 the claims that somebody had put that in as a request.

13 MS. LATIMER: There is a discussion about
14 that as central relief and this is where the litigation
15 may lead.

16 As the cases are completed, I am not
17 aware of a plaintiff with that claim.

18 MR. GERMANY: Bob Germany.

19 The way it is pled, you wouldn't be on
20 notice it is but there is a Mr. Willard who doesn't
21 this. I think that speaks to what Mr. Kelly spoke to
22 earlier, how we are considering streamlining the
23 process.

24 We intend to send a letter proposing
25 certain amendments to Novartis to see if we can reach

19

1 an agreement on that.

2 THE COURT: Okay. My view on that is --
3 and it would be my decision that we are not going to

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4 stay discovery on these nine class certifications. I
5 think we might as well get on with that. I think it is
6 going to be withdrawn or denied, and I will proceed on
7 that assumption.

8 That being said -- you are up.

9 MS. LATIMER: I will take another chunk,
10 Your Honor.

11 With respect to the comments to
12 preemption briefing, the reason we raise that right
13 now in our agenda is because it is our view that ought
14 to be considered as a purely legal issue.

15 Although I have no intention of
16 requesting a stay of the ordinary work up of the cases
17 while that is pending, it is not a motion I think ought
18 to be put off until the very end as in typical summary
19 judgment motions.

20 THE COURT: Preemption -- my prior
21 background, if you haven't looked me up -- and I kind of
22 expect everybody did -- I was a criminal lawyer a long
23 time. Preemption would be a government agency by
24 regulations or approvals that preempted the suits and,
25 therefore, you have protection because you complied with

20

1 all the government regulations and have government
2 approval from FDA, et cetera. I know I am probably

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3 simplifying it way down.

4 You are basically arguing if it has FDA
5 or government approval it ought to be dismissed.

6 MS. LATIMER: That's right. The only
7 revision I would make to your comments there is that the
8 way the argument would shake out it is not a question of
9 compliance but a question of fact approval.

10 Based upon that assumption and argument
11 that is why we believe it to be a legal issue.

12 Again, I am happy for the cases to
13 proceed right along as we are considering that but it
14 makes a whole lot of sense if we are correct and a
15 bunch of cases are preempted to resolve that right
16 now.

17 THE COURT: I assume from the plaintiffs'
18 side the plaintiffs are going to say a lot of that
19 depends on what was told and whether information was
20 withheld, et cetera, and discovery is needed on those
21 issues.

22 MR. KELLY: That's correct.

23 THE COURT: I wanted to be sure. That is
24 the other side of the coin.

25 MR. KELLY: That's correct.

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1 THE COURT: There is certainly nothing
2 wrong with Novartis filing a motion on that ground. It
3 seems if that is filed and it seems like it will be or
4 has already been or, I guess, is going to be, then to
5 the extent that the defendants need discovery to respond
6 to it, I would set perhaps some guidelines on that.

7 I have no problem with motions like that
8 getting sent up to Judge Campbell when they are ready.
9 I am sure they are going to want discovery because it is
10 going to be an issue about the old disclosure and they
11 are going to argue somehow the FDA or government was
12 misled and studies -- something happened with the studies
13 itself. I am sure that will happen.

14 Certainly nothing wrong with getting that
15 done. I wouldn't want to hold things up until we
16 resolved that. You didn't ask for that.

17 I think what we need to try to do is set
18 some deadlines on that, when you want to file it and
19 how long discovery would take on that issue and to
20 respond. Obviously 20 days to respond is not correct if
21 you have discovery. I suspect there will have to be
22 discovery. I don't think it will go off as a purely
23 legal issue. That is an area we will look at some
24 deadlines on.

25 Ms. Latimer, he was complaining about

1 the over-stuffed 440 boxes with no index. We have to
 2 discuss what is going to be done with the massive
 3 paperwork, and it seems like we have to have a
 4 numbering system to get stuff numbered and identified
 5 and what is used, perhaps, in state causes as well so
 6 we don't have a whole bunch of numbers on everything,
 7 and whether it is on searchable CDs.

8 Those are issues that make sense and we
 9 need to resolve and work out.

10 MS. LATIMER: I agree with that as well,
 11 Your Honor. I think the pendency of the MDL has
 12 encouraged us to move to what is certainly going to be
 13 an electronic production totally. Different categories
 14 of documents are going to have to get somewhat different
 15 electronic treatment because of the nature of the
 16 documents.

17 I believe that is something I can
 18 negotiate with whomever on the plaintiffs' side I
 19 should negotiate with. That is something I would like
 20 to get resolved today.

21 THE COURT: One of the issues given is
 22 the massive amount. I assume there will be issues about
 23 work product and issues about attorney/client, and I
 24 know one of the hang-ups that apparently happens is that,
 25 obviously, Novartis wants to be careful in handling

1 documents so that you don't make inadvertent disclosures.
2 I know there have to be cases where you have a safe
3 harbor and you have 30 days to retrieve it without a
4 waiver. Those are matters we should hopefully resolve.

5 You have a right to be sure you don't do
6 an inadvertent disclosure. On the other hand that review
7 can slow up the whole process. Sometimes I think having
8 a safe harbor where you can get it back within a certain
9 time and no waiver may be a way to look at it. I think
10 we can incorporate that into an order.

11 MS. LATIMER: I think that would be
12 extremely helpful to our process. We have large groups
13 of people engaged right now in the review process, in
14 particular for the work product and privilege things,
15 and also this litigation is complicated from a review
16 standpoint for privacy protection that the company has
17 no option whether to produce.

18 THE COURT: We have HIPAA problems.

19 MS. LATIMER: Yes, concerning tons of
20 redactions. That is not a problem for us substantively
21 but it is a hassle.

22 We are proceeding very much right now
23 moving it on to a fully electronic production, some of
24 which is fully word searchable right now and some will
25 be coded in ways that the plaintiffs will have full

1 access to it. I don't think that will end up being a
2 problem.

3 I think there were disagreements between
4 the parties when we had a few cases. Now that we are in
5 the MDL world, we have to change that.

6 THE COURT: And it has to have a
7 numbering system that you can agree on that can be
8 done.

9 On the electronic filing, that certainly
10 makes sense. We will somehow work it out.

11 I assume the plaintiffs' side, because of
12 the nature of the case, I assume the plaintiffs will be
13 executing all the blanket releases for their records.
14 We wouldn't have HIPAA problems as to that. I know
15 you have studies of individual records that are not
16 the plaintiffs. I don't know if I can crack that nut
17 today.

18 MS. LATIMER: A lot of courts have
19 attempted to crack that nut without a lot of success.
20 It is a difficult process.

21 We have the litigation or discovery effort
22 that has been underway so we are busily redacting that.
23 I think we will get it done in a reasonable time. I have
24 a pretty specific protocol on the numbering, bates
25 numbering and water numbering.

1 THE COURT: Water numbering is a new
2 term for me.

3 MS. LATIMER: Confidentiality markings
4 so if a document is produced the party that receives
5 it, it will be clearly indicated as something subject
6 to the protective order. I think we wouldn't have any
7 issue -- that is overstated.

8 I don't think the big issue you that has
9 been identified here about the thousands of documents in
10 the boxes will be an issue.

11 THE COURT: You can get it over to the
12 plaintiffs' side and they will take a look at it.

13 I already mentioned there has been some
14 confidentiality order issues in the state court. What
15 sort of view -- my thought is we ought to have a
16 confidentiality order and documents produced here can
17 also be used in state litigation and vice versa.

18 We may have different electronic data.
19 You will have to get me the names and telephone numbers
20 of the judges and I may try to give them a call and see
21 where we are. I think I can communicate with them to
22 see where we are.

23 MS. LATIMER: In the cases filed
24 originally in this court by Mr. Germany and his
25 colleagues, we have a protective order, umbrella. I do

1 want to review that again since we are switching to the
2 electronic system to make sure everything is covered.
3 I don't see any reason why that same one can't be
4 concerning all the federal cases.

5 with respect to the state cases, I
6 support the state court matters. My objection is the
7 concern with the protective order covering state court
8 cases is merely that.

9 THE COURT: I don't have jurisdiction.
10 I think the state judge can tell me to go fly a kite.

11 MS. LATIMER: I am confident that won't
12 happen.

13 THE COURT: I am not.

14 MS. LATIMER: I suggest the state court
15 plaintiffs have a different set of documents but a
16 protective order in place to protect them.

17 THE COURT: Yes. What I am talking about
18 is if we get a good draft it is essentially the same.
19 The state court has to sign that confidentiality order.
20 We need to try to get one verbiage. Whatever can be
21 worked out is fine. I can't tell a state court judge
22 what confidentiality he has like he can't tell me.

23 MS. LATIMER: If the order is in place
24 it is good for Novartis.

1 on the three cases filed here, we have a sharing
2 provision. By that, I mean, right now Mr. Beatie's
3 group -- I can't sit down and talk to him about those
4 documents. I can only do it with my own group.

5 THE COURT: I think it is pretty clear
6 once we are in MDL -- assume there is sharing among the
7 plaintiffs --

8 MS. LATIMER: No objection.

9 THE COURT: Some of the issues aren't
10 quite as bad as I thought.

11 MR. FLYNN: Pat Flynn.

12 THE COURT: Are you going to mess it up?

13 MR. FLYNN: I am not going to mess it up.
14 I was wondering about a timetable when Novartis would
15 proffer to us the proposal with reference to the
16 documents. We are dead in the water until we get the
17 documents.

18 THE COURT: Mr. Tummel can hear you pretty
19 well. You might want to stand there.

20 MS. LATIMER: With respect to the
21 revisions in the protective order, is two weeks
22 appropriate?

23 MR. FLYNN: That is fine, Your Honor.

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24 THE COURT: All right.

25 MS. LATIMER: Similarly the proposed

28

1 protocol for the manner of production, not the production
2 itself but the protocol, I would be happy to have to you
3 within a week.

4 MR. FLYNN: That is fine.

5 THE COURT: All right.

6 MS. LATIMER: I do request that I am
7 only negotiating -- I need to know with whom I am
8 negotiating. I don't want it with all 12. They might
9 have different views. I prefer they work it out among
10 themselves.

11 THE COURT: We are going to come to that
12 pretty quickly. I think that is probably not a bad
13 idea.

14 The plaintiffs' agenda, you all listed
15 out three groups. Is it Mr. Valad?

16 MR. VALAD: Yes.

17 THE COURT: You are kind of a group of
18 one?

19 MR. FLYNN: With my partner John.

20 THE COURT: The others have multiple law
21 firms. You are kind of there by yourself. You

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22 definitely have a seat at the table.
23 There are proposals for various sundry
24 committees. It says a proposed list of steering
25 committee's duties and responsibilities will be filed

29

1 with the Court in the near future and Mr. Flynn was
2 going to be liaison counsel, and talked about
3 subcommittees as to pleadings and briefings and trial
4 preparation committee, document review committee,
5 expert witness, damage subcommittee, class action
6 subcommittee and who was going to be on the committees,
7 et cetera.

8 Let's talk about a that a little bit.
9 One thing as far as costs, my view is the more lawyers
10 at a deposition the longer it takes and the more it
11 costs, and generally it doesn't come out as well. Too
12 many cooks spoil the broth.

13 I hope when you get in depositions you
14 keep it down to a minimum number of lawyers. It is
15 intimidating to witnesses if they have a phalanx of
16 lawyers.

17 Mr. Flynn, they suggested you be
18 proposed as liaison counsel.

19 What do you envision as liaison counsel
20 you get to do?

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21 MR. FLYNN: Your Honor, I looked and
22 tried to determine my duties. I am the go-to-person
23 for the plaintiffs as far as the Court is concerned, I
24 think is the primary obligation. I think in addition
25 to that the steering committee they proposed would

30

1 select lead counsel which would be a number of three
2 to six lawyers and they would then comprise the counsel
3 who actively were involved in the trial preparation and
4 the trial themselves.

5 I suppose on discovery matters it might
6 be appropriate for the liaison to get instructions
7 from the other attorneys and then negotiate with defense
8 counsel.

9 THE COURT: Obviously Ms. Latimer would
10 like one person that she can go to initially and work
11 with. You can't instantaneously speak for all the
12 lawyers?

13 MR. FLYNN: Quite the contrary, Your
14 Honor.

15 THE COURT: When we need an answer, you
16 are the one that we pop the questions to?

17 MR. FLYNN: I will go get an answer.

18 THE COURT: Or you come back and say you

19 AREDIA
can't and we will have a hearing to sort it out?
20 MR. FLYNN: That's correct.
21 THE COURT: There are a lot of different
22 issues there. We have this one case we don't know --
23 wrote the number down impromptly, the 394 case.
24 MR. FLYNN: Ingram.
25 THE COURT: Yes. That is the case we

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1 don't know anything about.
2 MR. FLYNN: Can the Court not make that
3 case subject to the --
4 THE COURT: I also put down why the case
5 shouldn't be dismissed for failure to appear. There
6 are several things I can do to get their attention.
7 Nobody knows anything about it. Do you
8 know anything about the contact or anything about it?
9 MS. LATIMER: I know Mr. Turley is the
10 lawyer. He is a Texas attorney that filed the case in
11 Oklahoma, and that is all I know about it.
12 THE COURT: He will probably get an order
13 for failure to show up.
14 MS. LATIMER: I know he was on the service
15 list also.
16 To make sure the Court is aware, there
17 are additional cases -- and I am sure you are aware --

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18 but there are ones docketed in federal court that
19 haven't been transferred over that involve other firms.
20 Just to follow-up on the observation, whatever orders
21 are entered, I would urge the Court they are binding on
22 the subsequently transferred cases as well.

23 THE COURT: They will be binding unless
24 they can convince me for good cause shown there should
25 be a different result.

32

1 Anybody have a rough guess how many more
2 cases we have out there?

3 MR. KELLY: I have a rough guess, Your
4 Honor. We have filed 93 cases involving 128 plaintiffs
5 in federal court.

6 THE COURT: That is filed?

7 MR. KELLY: Yes.

8 MR. VALAD: I have several to file and
9 talking about whether direct MDL filing.

10 MR. BEATIE: Russell Beatie. I am in
11 the long list. We have approximately 10 or 15 unfiled
12 cases we are collecting medical information on so we
13 can complete the pleadings and file them. They will
14 get here sooner or later depending whether filed in New
15 York or not or filed down here, with the Court's

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16 permission.

17 THE COURT: That is 27. That is 93 gets

18 up to what?

19 MR. BEATIE: Our estimate is probably

20 about 150 cases all together.

21 THE COURT: Involving a couple hundred

22 plaintiffs?

23 MR. BEATIE: Yes.

24 MR. KELLY: We have approximately ten

25 more to file.

33

1 THE COURT: All right. If you wait until

2 everybody gets filed, we will never get done.

3 I think the order will clearly apply to

4 all cases coming in unless there is some good reason

5 why there needs to be a change.

6 The steering committee, to the extent

7 you all are filing additional cases, you are in the

8 group. To the extent that people are not in the group

9 of three plus the one we have right now, we will just

10 have to see where they are. And that may get into the

11 issue of membership of the committee. If somebody is

12 going solo, they will want a seat on some of the

13 committees.

14 If you have four or five solos, I won't

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15 get a committee that gets unwieldy?

16 MR. BEATIE: Your Honor, our submission
17 contemplated incorporation of the people.

18 THE COURT: That may be the place to get
19 them on subcommittees.

20 MR. BEATIE: I can't imagine any
21 circumstance where you enter an order it wouldn't be
22 applicable for the life of this proceeding. I think
23 orders entered in the future would be subject to the
24 same rational equally applicable to everybody today.
25 If we behave like reasonable people and

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1 incorporate these new participants in ways to make them
2 feel like part of the group and people are listening to
3 their ideas, I can't see any problems and --

4 THE COURT: I think that is good tactic.

5 Let's talk about the issue of direct
6 filing. I read that and apparently the judge down in
7 Louisiana has done that. I had a bunch of cases on my
8 docket and they all went down there. Maybe a
9 consequence of us getting rid of some of those cases we
10 got a MDL case. Our turn in the barrel, I guess. I was
11 more happy being on the transfer court than the
12 transferee court.

13 AREDIA
14 what is the law on that? Does -- do you
15 have a view on that? I am a lost ball in high weeds.
16 It speeds things up. You have to go
17 through MDL and they have to set it and you have 15
18 days to object and if nobody -- and it take time to get
19 down here. It is probably going to come down here
20 regardless. It is a question of when.
21 I want to make sure we don't create
22 problems further down the road. If we have to have
23 certain things go back out --
24 MS. LATIMER: Our view, it creates too
25 many problems on the back end. It is inconsistent with
the statute itself. The statute is going to require, as

35

1 the Lexecon County case made clear, require the MDL
2 court at the end of the day, the panel, to remand the
3 cases back to you at the end and then you would have to
4 have a 1404 transfer.
5 We are not saving time on the back end.
6 We are complicating things considerably because the
7 choice of law situation is going to be considerably
8 screwed up.
9 I think the double transfers in place
10 now are certainly throwing things down. Mr. Beatie's
11 firm is primarily filing cases in New York, which he

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12 agrees, and told the panel probably would be subject to
13 transfer to trial down the road. What is going to happen
14 to those cases, they are being transferred here by the
15 panel and have to be transferred back there and then the
16 New York court will consider the 1404 transfers back to
17 Nevada and Oklahoma, et cetera.

18 So, the double transfer cases I
19 definitely --

20 THE COURT: Run me through that double
21 transfer again. We have some western states thrown in
22 there.

23 MS. LATIMER: I do --

24 THE COURT: Run it by me one more time.

25 MS. LATIMER: The plaintiffs in the

36

1 currently filed cases --

2 THE COURT: A bunch in New York, southern
3 and eastern.

4 MS. LATIMER: Correct. But on a statewide
5 basis where the plaintiffs are from, 36 cases are
6 implicated.

7 THE COURT: Thirty six?

8 MS. LATIMER: Thirty six states. I meant
9 states.

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10 Here is what is going to happen in the
11 New York cases as Judge Keeman made clear. The cases
12 are filed in New York. The panel, pursuant to the
13 statute, is transferring them here for the pretrial
14 coordinated proceedings.

15 The panel is going to be obligated at
16 the end of this MDL if the cases are not resolved to
17 remand them back to New York.

18 This Court knows and the panel knows,
19 Judge Keenan knows they are not properly venued there.
20 All the other --

21 THE COURT: I am sorry.

22 MS. LATIMER: That is what I am calling
23 the double transfer. It has to go back to New York.
24 Mr. Beatie filed the cases in New York for convenience
25 reasons for him and the panel has very candidly

37

1 acknowledged. That is fine.

2 Now with the MDL created in Nashville,
3 it makes no sense for the double transfer to be slowing
4 anything down.

5 In terms of direct filing itself, you
6 don't have a double transfer problem but you do have a
7 tremendous wasted effort on a bigger file at the end of
8 this proceeding than the MDL.

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9 The panel is going to be obligated when
10 you remand these cases out, the panel is going to be
11 obligated to remand them right back to you even though
12 they are not properly venued here because of convenience
13 reasons.

14 The plaintiffs and their treating
15 physicians are from somewhere else. The remand back
16 will be here. The court staff is going to have to
17 figure out and divide up these very large files and move
18 the files twice, and back to these home jurisdictions.
19 People are trying to deal with these problems. The
20 statute contemplates on the transfer in and transfer
21 out.

22 THE COURT: Well, I am not going to
23 resolve that one.

24 MR. BEATIE: May I speak to that?

25 THE COURT: Mr. Beatie?

38

1 MR. BEATIE: Yes.

2 THE COURT: I am terrible on names. If I
3 screw up your name it is not personal.

4 MR. BEATIE: It won't be the first time.

5 THE COURT: I get senior moments and
6 forget my own name.

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7 MR. BEATIE: We have had this issue
8 before. We have given considerable thought in our
9 office and paid a great deal of attention to it before
10 we began processing the filings in all the cases in New
11 York, to give some sense of convenience to clerks'
12 offices everywhere.

13 Our view is the case ends up here one
14 way or the other. The most convenient way for them to
15 end up here is permit us to do direct filing as we saw
16 Judge Fallon do in the Vioxx case.

17 We understand the business about
18 remanding back to the panel and back to you and off
19 somewhere, not to outer space but a someplace that has
20 some logical relationship to the facts.

21 It doesn't seem to me to be any reason
22 why at the conclusion of the proceedings, multi-district
23 proceedings when you and the district judge are finished
24 with us and ready to send us to the jurisdictions where
25 the cases should be tried, I don't see any reason why

39

1 we can't agree now or later that they would be sent to
2 a jurisdiction that would be appropriate.

3 For example, the residence of the
4 plaintiff, state of residence of the plaintiffs.

5 There may be one or two cases that will require motion

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6 practice because of peculiar circumstances.

7 what I suggest is to allow the court for
8 direct filing, that we will behave like intelligent
9 people and we will at the end agree on the remand to
10 the state that would be an appropriate jurisdiction for
11 the case.

12 THE COURT: Now, when I originally saw
13 that I was naively thinking at the end this Court would
14 do a remand back to the, quote, appropriate district.
15 Both of you seem in agreement.

16 MR. BEATIE: I think that is the correct
17 way.

18 THE COURT: I think you said it would to
19 go back to the MDL.

20 MR. BEATIE: I don't understand that to
21 be the case. The practical effect here, if we remain
22 here and try a battery of test cases here as you
23 suggested earlier, at least I understand that. I am
24 unfamiliar with any multi-district proceeding that ever
25 went back anywhere. They always end in the

40

1 multi-district court.

2 One would hope we would all come to our
3 senses and be able to work something out like that

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4 here.

5 So my guess is, as a practical matter,
6 we never reach the question at all. But also as a
7 practical matter, I advise the Court we would behave
8 like rational people and not fight over remand
9 jurisdictions because we think jurors are better in
10 Minnesota than in Wisconsin or whatever.

11 THE COURT: Nobody wants to go to Baxter,
12 Texas or the one up in Illinois.

13 MR. BEATIE: Given the fact my wife is
14 from Texas and I lived there when I was a little boy, I
15 would like not to go to Texas in the summertime if that
16 could be avoided.

17 THE COURT: Okay. Maybe it is Minnesota
18 in the winter. Maybe the best thing to do is let you
19 all submit a short brief on that. That is obviously
20 something that is going to impact this. That is
21 something I want to discuss with Judge Campbell. I won't
22 rule on that this morning.

23 I would be interested to see if somebody
24 files within the next 10 days a brief and copy of judge
25 Fallon's order. I will take a look at that and kind of

41

1 see.

2 A practical standpoint, I admit. It
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3 does -- initially I like the idea to get things going
4 on the front end. I agree historically it is rare a
5 MDL case goes back. Again, there is always that
6 possibility.

7 I think we have to prepare for the
8 worst. If it did happen, I understand, Ms. Latimer,
9 your position is that would be a huge mess at the
10 end.

11 It may be if they came in -- they come
12 in with an agreement they go back to where they go so
13 we can avoid that problem.

14 I kind of like the concept but I want
15 to make sure I am not picking up a few too many thorns
16 with my rose.

17 MS. LATIMER: We will brief the issue. I
18 think it was addressed by the Supreme Court, frankly.

19 THE COURT: That is always good guidance.

20 MS. LATIMER: Sometimes. It is guidance.
21 I am not sure it is good guidance always.

22 THE COURT: Ten days or so is fine.

23 Let's go back to our committees a little
24 bit.

25 I think who is going to be on the

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1 committees, first cut at it, is the plaintiffs. You
2 all are much more familiar with the players and what
3 you want to do than I am.

4 You said you were going to file some
5 lists and duties and responsibilities with me. I guess
6 that is the best way to get that done. That is where
7 we need to start putting names to it, with the
8 provision that we get other counsel coming in that feel
9 like they want a seat at the table, we will have to see
10 about adding.

11 I think clearly there has to be a size
12 limit to a committee. You get 20 people on it and
13 you defeat the purpose. I think three, five, six,
14 seven. You get much more than seven and I get a little
15 nervous.

16 What is your thought to the size and
17 which committees we need?

18 Mr. Flynn or Mr. Germany?

19 MR. GERMANY: Judge, I think we did a
20 pretty good job describing what we needed in the agenda.
21 We have had two meetings of my group -- I don't know
22 how it became my group -- Mr. Beatie's group and Mr.
23 Valad's group. I think we have a pretty good idea how
24 we would like to do it.

25 The proposal would be two members from

1 my group and two from Mr. Beatie's group and two from
2 Mr. Valad's group to make up the steering committee
3 and the steering committee would make the subcommittee
4 assignments, all this subject to the Court's approval,
5 of course.

6 THE COURT: You would have six on the
7 steering committee?

8 MR. GERMANY: Yes, sir.

9 THE COURT: Again, I know we don't
10 necessarily know. Do you envision out there somewhere
11 there is going to be another firm that is going to come
12 in with several cases? You may not have a way of
13 knowing.

14 MR. GERMANY: I have had conversations
15 with one other group. They only have two cases at the
16 present time in state court, and one case in federal
17 court. They expressed some interest in serving on the
18 subcommittee.

19 Certainly once their cases get to this
20 Court and we know them, we will be happy to talk to
21 them.

22 THE COURT: What about your New Jersey
23 cases? You have the group of three here. You have
24 got -- plus one. You all got some contact with those
25 cases.

1 I am thinking, to think informally, is
2 there some form of contact with that?

3 That is split up with different state
4 judges?

5 MR. VALAD: I believe Mr. Valad has most,
6 if not all, of those.

7 MR. VALAD: I have the seven in New
8 Jersey and I am working with the other plaintiffs'
9 attorneys, the three groups described.

10 THE COURT: You would be on this steering
11 committee?

12 MR. VALAD: Yes, Your Honor.

13 THE COURT: That might be one way to keep
14 us posted on what is going on in New Jersey.

15 From Novartis' standpoint, do you have
16 any comment on the committees?

17 Do you have a dog in that fight?

18 MS. LATIMER: No dog in that hunt, Your
19 Honor.

20 THE COURT: Well, that makes sense to
21 me. I guess you all agree if I need to jump on somebody
22 and haul them up and shoot them that Mr. Flynn is the
23 designated target.

24 Congratulations, Mr. Flynn.

25 MR. FLYNN: Thank you, Your Honor. It is

1 a real honor.

2 THE COURT: You may be like the javelin
3 team that elected to receive. We will see how that
4 goes.

5 MR. FLYNN: As a practical matter, we
6 probably need to propose that we will actually put in
7 writing a list of the committees, the identity of the
8 steering committee members.

9 May I confer with counsel?

10 THE COURT: Sure.

11 MR. FLYNN: Identify subcommittee
12 members, too.

13 Do you want those submitted to you for
14 your approval or simply for your advice?

15 THE COURT: What is the difference
16 between advice and approval?

17 MR. FLYNN: We could go right ahead or
18 see if you are okay with it. That is the difference.

19 THE COURT: I guess my thought is if you
20 advise me -- unless somebody files an objection. You
21 might have somebody that feels like they were hurt or
22 something. My thought would be I would approval it.

23 I think I could do an approval subject to
24 any objection filed within 25 minutes or something.
25 Seriously, more like seven days or something.

1 MR. FLYNN: That casts it in a different
2 light. You give us an order and this would be
3 interlocutory in nature. If somebody got unhappy they
4 could file a motion to alter or amend your order. I
5 would prefer that.

6 THE COURT: That may be one way to do
7 it. I usually do my own orders. I think I may have
8 you do the drawing of orders.

9 Mr. Tummel is keeping good notes. I
10 assume you will want a transcript from him. I think we
11 will need one.

12 My notes are sketchy. After about two
13 or three days, I can't read most of them anyway.

14 Mr. Flynn, I would suggest you draw up a
15 proposed order on that, and I think that is a good idea,
16 an order directing you to do all those things and
17 provide in it that any party having objection to it
18 needs to file something and we can see if there is a
19 necessity to modify it.

20 Now, as far as the committees, you all
21 know more about what you need as far as committees and
22 subcommittees.

23 From Novartis' standpoint, I think if
24 they have a steering committee they can deal with it
25 and it makes their life easier.

1 I assume to the extent there gets to be
2 a squabble that the committees or subcommittees are
3 going to run it up to the steering committee.

4 I am also interested in how it is going
5 to get to me.

6 MR. GERMANY: Judge, what I envision,
7 based upon past experience, is that the problem would be
8 reported to the steering committee and they would meet
9 and confer and decide how to address that problem and
10 that information would be passed to Mr. Flynn and then
11 the appropriate person for Novartis.

12 If it involves the Court, of course, we
13 will notify the Court.

14 THE COURT: I know local counsel are
15 familiar with this. I am a great believer that lawyers
16 ought to talk to each other. I get real frustrated
17 when I get motions in and they say I called and left an
18 e-mail or voice mail and it turns out they never spoke
19 to each other.

20 I realize we have New York, Washington,
21 California, Nashville lawyers. I would like you all to
22 talk to each other.

23 Normally in my orders I also put in a
24 requirement before anybody files a discovery dispute,

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25 you actually talk to me about it. Obviously we have a

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1 steering committee or liaison, and that is a manageable
2 group I can handle. I really like to talk to people
3 about discovery problems.

4 I found -- this is the first MDL case I
5 have handled, and that may be different. Generally,
6 I have found if they tell me the dispute that about 95
7 percent of the time we can solve it.

8 I will say this is my view on that, and
9 people move on and we don't get -- it gets done a lot
10 quicker without paperwork.

11 You have motions and responses and I
12 have to take a look at it. If I can do it by phone, I
13 can do it. I am generally available.

14 I am taking recall status the 3rd of
15 August. I will be gone from the 3rd to the 12th and
16 you won't catch me. I am out of the country in Fiji.
17 I hope to -- I hope to dickens they don't have e-mails.
18 I plan to be diving with my wife and a group, and I don't
19 plan to think of anything.

20 Coming back, I will be moving down the
21 hall where Judge Nixon used to be. I am back on recall
22 status. My load is going down a little bit but -- at
23 least until I got this. I am good for a year and a day

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24 subject to an additional year and day.

25 I do like to talk to the lawyers to

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1 hopefully resolve it without getting into a lot of
2 paperwork.

3 MR. FLYNN: Your Honor, I am not familiar
4 with your practice with reference to being able to call
5 the judge and talk about things. I like the idea.

6 Did you notice in our paragraph 11 of
7 our proposed agenda we have a meeting/confer requirement
8 we would like put in the order?

9 THE COURT: That is in our local rules.
10 I take it another step. Before you file that motion,
11 you have to talk to me about it.

12 MR. FLYNN: You want us to have a
13 conference with you?

14 THE COURT: Yes. I think 95 percent I
15 can resolve. This may be more complex than that and
16 some issues you really have to look at the motion and
17 get their side. Particularly when you get into
18 privilege and other issues that might have to be
19 briefed.

20 I can't do everything by a telephone
21 call. It tends to keep the case moving.

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22 AREDIA
MR. FLYNN: You might notice our
23 meeting/confer requirements go beyond discovery, which
24 I think the local rules just deal with discovery.
25 we are asking for a meeting in person

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1 or telephone conference in connection with all motions.
2 THE COURT: I don't think that is a bad
3 idea.

4 Ms. Latimer, what is your thought on
5 that?

6 MS. LATIMER: Can I safely assume they
7 don't agree to my preemption motion, based upon this
8 morning's conference?

9 MR. FLYNN: We haven't conferred on that,
10 Your Honor.

11 MS. LATIMER: I have no objection to
12 meeting and conferring. I notice it says if we haven't
13 heard back in two days --

14 THE COURT: That may be a little quick.

15 MS. LATIMER: I would prefer to stick
16 with the good faith requirements that the Rule requires.
17 In a given circumstance two days might be great but
18 different circumstances it might not be enough.

19 I was uncomfortable with that provision.

20 THE COURT: What I don't want -- and I
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21 get this all the time -- a motion will come in and they
22 say I left an e-mail or voice mail and I haven't heard
23 from them in two days. I don't want any of that.

24 I want some actual communication. I
25 assume you have, perhaps, other litigation, and counsel

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1 might. Sometimes you can't get back in two days.

2 I don't think we need to put two days
3 in there. Maybe five days is a more reasonable amount
4 of time.

5 I want active communication. I don't
6 want I left a voice mail and nobody responded. That
7 won't work.

8 MR. FLYNN: Thank you. We will change it
9 to five days, Your Honor.

10 THE COURT: If we get into discovery
11 disputes, let me give you a couple sort of philosophical
12 views I have.

13 I see an awful lot of discovery stuff
14 that comes before me in regular cases. You see these
15 incredibly broad questions that ask for every document
16 from the beginning of time. I had the one that had from
17 the beginning of time.

18 The other side will come back and say it

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19 AREDIA
19 is vague, burdensome, incomprehensible, et cetera, et
20 cetera. In other words there are no such documents or
21 nevertheless documents are provided.
22 My view is if you have a good objection,
23 make it. Don't just throw it in because it is in your
24 word processor, stock objections.
25 I realize counsel are concerned about

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1 waivers. If you want to get me in a bad humor with
2 page after page of stock objections and then an answer
3 at the end, that just puts me in bad humor for whoever
4 does it.
5 If I see a question that is terribly
6 broad, that doesn't put me in good humor. If you ask a
7 garbage question, don't complain to me if you get a
8 garbage answer. If you ask a good question you will get
9 a good answer.
10 Let me lay that out as my general
11 philosophy. A good question deserves a good answer,
12 and don't exercise your word processor answer. Put
13 some thought into the question and answer.
14 I had one case I swore I would make the
15 attorneys hand write their questions and answers just to
16 get it out of the word processor.
17 I am not a big fan of ten pages of

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18 definitions where and is defined as and and is is
19 defined as is, et cetera. That turns me off.

20 If you want to get me into bad humor
21 that says denied or granted, depending whose side is
22 irrelevant, that is how I get my denied and granted
23 stamp out.

24 I do a lot of denied and granted on
25 orders because it is quick. I am fairly prompt on

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1 ruling of things. Right or wrong, I will rule. If
2 somebody wants to take me up to Judge Campbell, he
3 gets paid the big bucks to do that.

4 Generally, he is of the view I have to
5 be clearly erroneous or contrary to law. If he starts
6 reversing me a lot -- unless I am flat off base, it
7 won't be remarkably successful. I may be wrong. I am
8 sure I made them before and I will make them in the
9 future.

10 You don't offend me by taking it up to
11 Judge Campbell. That is what the rule says and you
12 ought to do it.

13 How long do you think you will be to get
14 me some sort of view who the committee and all is going
15 to be? I think you can do that fairly promptly.

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16 AREDIA
MR. FLYNN: Because of the holiday, 10
17 days, Your Honor?
18 THE COURT: Yes. You have the Fourth of
19 July. I think the best thing to do is put it in the
20 form of -- put a draft order with it.
21 MR. FLYNN: Yes.
22 THE COURT: Now, let me see. Do you want
23 a brief break? I think I do, on second thought. Let's
24 take five minutes and you all be back in ten. Nobody
25 takes a five minute break.

54

1 (Whereupon, the Court was in recess.)
2 THE COURT: Let me look down at my notes
3 to see what I had. We covered a lot.
4 I think we have to get to some dates on
5 disclosures and various other things, and try to get
6 some dates set.
7 MR. FLYNN: Your Honor, may I comment on
8 that a moment?
9 THE COURT: Please.
10 MR. FLYNN: We are particularly excited
11 as plaintiffs that we actually have three trial dates
12 carved out at this time.
13 THE COURT: I am not sure Judge Campbell
14 held those dates when it went MDL. He wants some trial

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AREDIA

15 dates, and we can take a look at them to see if it is
16 possible.

17 MR. FLYNN: Here is what I would suggest,
18 and perhaps other people have something else.

19 We believe it will make sense, since the
20 cases are pretty clear all separate cases and the local
21 cases here are going to be prepared for trial, that the
22 plaintiffs in the local cases -- or let's just say the
23 plaintiffs be allowed to identify three cases or four
24 cases that they want to try first.

25 The plaintiffs also like the idea of

55

1 test cases, and open discovery be permitted on those
2 cases by the defendants in the sense that the defendant
3 can do whatever discovery they want to do on those cases
4 and at the same time we are all proceeding with the MDL
5 discovery that is general in nature but a stay issue with
6 reference to the other plaintiff's cases until MDL is
7 completed.

8 In that way we don't bog down individual
9 plaintiffs' depositions.

10 I think I saw the defendants wanted some
11 number, 18 was it -- perhaps I am mistaken. But could
12 we have a stay except for four plaintiff cases?

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13 AREDIA
THE COURT: Well --
14 MR. FLYNN: And we also have trial dates
15 for those cases.
16 THE COURT: Judge Campbell had made it
17 clear he wanted trial dates for the three cases. Absent
18 the plaintiffs or parties, the only cases that really
19 have absolute jurisdiction here that can be tried in
20 this district are the three original cases.
21 Are there any others that would be
22 subject to trial here absent consent? Absent consent,
23 you can only try those that are here to start with.
24 MS. LATIMER: Yes, Your Honor.
25 MR. BEATIE: Your Honor, I am not sure

56

1 that is necessarily so. I think Judge Fallon did
2 whatever he wanted to do with trying cases, with
3 establishing a track record to assist him in settling
4 the entire proceedings sent to him.
5 THE COURT: That is one thing I wanted to
6 discuss a little bit. Some of the other parties might
7 feel like if the three Nashville cases get tried here
8 perhaps one of their cases would be a best test case or
9 Novartis would think it might be another case.
10 Clearly, we are going to request a target
11 trial date. It might be the same that Judge Campbell

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AREDIA

12 set. We will set a trial target date on those cases in
13 Nashville. What we do as to the other cases, that is
14 certainly open for discussion.

15 MS. LATIMER, from Novartis' standpoint
16 do you have any view where that should ultimately go if
17 we try to select some test cases?

18 I am sure you're not wild about the
19 plaintiffs getting the sole pick of which cases get
20 tried first.

21 MS. LATIMER: That is true. I think the
22 Vioxx example is not good. Judge Fallon is looking at
23 potentially a hundred cases. And I understand we are
24 looking at 150 here. Putting that aside for the moment,
25 here are a couple things.

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1 The observation today, for the first time
2 we are no longer pursuing the class action on the
3 personal injury side changes, frankly, everything with
4 respect to scheduling and the way we were intending to
5 work up the cases and specifically as it relates to the
6 trials.

7 There are 35, I believe, punitive
8 class members, named plaintiffs in the three Tennessee
9 cases.

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AREDIA

10 THE COURT: Yes. They picked a wide
11 variety. I see they have something from foreign
12 countries. We may need to --

13 MS. LATIMER: I believe all the foreign
14 nationals have been dismissed or dropped out.

15 MR. GERMANY: That's correct.

16 THE COURT: I didn't pick up that they
17 dropped.

18 MS. LATIMER: When the case is cued up
19 as a potential class action the issue was whether it
20 would be certified as a class. The question of venue
21 and the proper place for trial were real different than
22 if you are talking about individuals.

23 of the 35 only two are residents of
24 Tennessee.

25 Novartis would very much intend to

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1 pursue a 1404 transfer of appropriate cases for trial
2 down the road. We have not made any investigation or
3 inquiry about that because at this point we were just
4 considering whether the cases -- there is no reason to
5 transfer a case out at the moment that supposedly would
6 be a national class action.

7 So this changes a lot in terms of where
8 the cases are headed for potential trial dates, in our

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AREDIA

9 view. I don't know what district -- I am sorry. I
10 should know. I don't know where the two Tennessee
11 plaintiffs reside, what district.

12 THE COURT: I think they are the Middle
13 District, aren't they?

14 MR. FLYNN: I think they are the Eastern
15 District. They are the Eastern District and we have
16 three more to file that are Tennessee residents.

17 THE COURT: Somebody has a Middle
18 District case because they were filed here.

19 MR. FLYNN: We have the Western
20 District. I don't have the ability to tell you
21 offhand.

22 MS. LATIMER: As a national class it is
23 fine to consider all the venues.

24 THE COURT: I guess it is too late now.
25 How did we end up in the Middle District.

59

1 MS. LATIMER: Because the national class
2 could be decided anywhere and MDL could be. I am not
3 wanting to give up cases where my witnesses are, Your
4 Honor.

5 I need to go back and look where the
6 plaintiffs are. I am not prepared to do that today.

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AREDIA

7 THE COURT: I could pull the first three
8 cases. I was thinking some were from the Middle
9 District, some of the plaintiffs were.

10 MS. LATIMER: I don't believe so, Your
11 Honor.

12 MR. FLYNN: Your Honor, they are from
13 the Eastern District, I believe, and Western District.
14 I think it is pretty clear under the
15 law that the jurisdiction is within any district within
16 the state. They are properly filed, without question,
17 here.

18 THE COURT: At least in your view.

19 MS. LATIMER: I am not arguing pure
20 venue. We have argued it all over the country. That
21 would not necessitate a trial where we do business if
22 the key witnesses and evidence are in a different
23 district or forum.

24 THE COURT: I will leave that aside. I
25 am going ahead for the three cases that are filed in

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1 Tennessee. I need to get some dates.
2 That is not foreclosing you from having
3 valid objections if they should be done somewhere
4 else.

5 I have to start somewhere. I guess this

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AREDIA

6 is one I will stick the plaintiffs with drawing up the
7 initial case management order.

8 Obviously, before you get it to me for
9 approval, I want it submitted to Ms. Latimer as well.

10 I want to go ahead and lift the stay on
11 discovery for all purposes in the three Tennessee cases.
12 The other cases, it seems to me, however we describe it,
13 we need to lift the stay as far as MDL work would be
14 done.

15 The question in those cases is how much
16 do we want to get -- from Novartis' standpoint -- how
17 much we want to get in to the details of the plaintiffs'
18 specific medical situations. I think that, obviously,
19 would be a much broader issue.

20 I could also see from Novartis'
21 standpoint if there are going to be trials there may
22 be some cases that are more representative of it than
23 these three.

24 I don't want to foreclose you from
25 having an ability to suggest some other cases for

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1 trial.

2 what we might do on that, Ms. Latimer,
3 is to go ahead and get this started and if you feel

AREDIA

4 there is a small number of additional cases we ought
5 to open up for more specific discovery, you can ask for
6 us to do that and we can look at it.

7 I am trying to keep the trial dates in
8 the three Tennessee cases -- I am not foreclosing by
9 any stretch -- those have to be the first three tried.
10 You have to look at it.

11 MS. LATIMER: I might not be clear on what
12 the Court is proposing.

13 THE COURT: I may not be clear.

14 MS. LATIMER: The three Tennessee cases
15 as it's established now involves some 35 plaintiffs.

16 THE COURT: They dropped some out.

17 MS. LATIMER: I think it is about 35.

18 THE COURT: Let me ask Mr. Flynn.
19 would you agree if you're going on those
20 cases Novartis would have the right and obligation, in
21 fact, as representing their client to go into specifics
22 with those 35 people?

23 MR. FLYNN: Yes. That is why we wanted
24 to pick them.

25 THE COURT: All right.

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1 MS. LATIMER: I am just having --
2 MR. GERMANY: He is trying to figure
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AREDIA

3 out how many we are talking about.

4 MR. FLYNN: Four.

5 MS. LATIMER: I don't know who is
6 representative if I am only given four. If I have 35,
7 maybe I can figure out who the representative will be.

8 MR. FLYNN: Apparently she is saying
9 the reason the Court can't stay discovery is that she
10 wants to be able to pick her cases. Perhaps her
11 discovery could be limited -- I don't know how to do
12 that.

13 what she needs to have is a questionnaire
14 she prepares that we answer and based upon that
15 questionnaire then she can do a motion or deal with this
16 further.

17 MS. LATIMER: We propose in our agenda a
18 plaintiffs' fact sheet to kind of substitute for
19 interrogatories.

20 THE COURT: The fact sheets seem to make
21 sense to me.

22 MS. LATIMER: That is commonly done. If
23 you are talking about test cases, I kind of need to
24 think that through because the landscape has changed a
25 lot.

AREDIA

1 THE COURT: I am not setting you in
2 concrete.

3 MS. LATIMER: That is fine. It is good
4 to talk through it.

5 I believe you can't pick a representative
6 case without knowing what the population is we are
7 talking about. I won't know that until I get this
8 questionnaire back, or fact sheet back and you can get a
9 fact sheet to liaison counsel to work out with the
10 steering committee in a couple weeks.

11 I have no problem with that approach at
12 all. I would like that kind of information from the
13 plaintiffs as a group, if we are going to talk about
14 what is representative and what is not. This is a very
15 diverse population.

16 MR. FLYNN: We agree she is entitled to
17 that.

18 I got off track intellectually. I do it
19 more and more, I think. The Tennessee cases will be
20 set.

21 As far as test cases, that is another
22 discussion that Ms. Latimer discussed with us. We
23 agree that the questionnaire ought to be obtained and
24 returned to her promptly.

25 THE COURT: It sounds like we need to

1 provide for a questionnaire. Let me be sure I am
2 understanding.

3 When we say the three Tennessee cases,
4 those are three cases. But if you look at the number of
5 named plaintiffs in those cases, Ms. Latimer is saying it
6 is 35 named plaintiffs.

7 MR. FLYNN: Right. I am talking about
8 the Tennessee cases that are named.

9 THE COURT: That is a smaller group.
10 From Ms. Latimer's standpoint that may or may not be
11 the ones they prefer to try first. She doesn't know,
12 and you agree she is entitled to a questionnaire, to
13 come up with it?

14 MR. FLYNN: Yes.

15 THE COURT: I want to get some cases set
16 for trial. Once we get some trial dates set and work
17 toward those dates there can be modifications and
18 changes. You have to start somewhere. There is nothing
19 like a trial date to focus peoples' attention on trying
20 to settle it or whatever. Obviously, this is a case,
21 to settle it, is going to involve substantial,
22 significant funds perhaps, or whatever. If there is
23 anything I can help on that, I will do it. That is
24 probably down the road.

25 Let's go down the rest of the notes. I

1 had notes about foreign depositions and procedures.

2 That is out. That could have complicated things.

3 we talked about filing the cases here.

4 You will brief that.

5 We talked about the steering committee.

6 I don't know that -- I think the plaintiffs mentioned
7 something about sort of handling -- I don't know -- fees
8 or anything. I don't need to get into that as such.

9 Obviously, if it ever comes down to fees,
10 I think one or two or three attorneys is probably
11 plenty. I wouldn't approve of having a whole flock or
12 covey of plaintiffs' attorneys at each deposition. To
13 the extent I get into fees, that wouldn't fly with me.

14 MR. GERMANY: I don't think that will be
15 a big problem. I think within the committee we can
16 establish who should be there and who will not.

17 The main reason what I asked the Court
18 for, the standard procedure is that any lawyer from
19 around the country, as I understand the law, who does
20 work on a Novartis case seems to think it may have
21 produced a favorable outcome would at some point have
22 the right to come to this Court and file a motion to
23 get some of the common benefits, funds we will ask you
24 to create at some point.

25 All we want is a set rule that everybody

1 plays by; there won't be different type motions filed
2 at the end of the day.

3 THE COURT: You have something in mind?

4 MR. GERMANY: Judge Fallon -- I hate to
5 keep going back to him. You get a headache trying to
6 reinvent the wheel. He has a very detailed --

7 THE COURT: I know Ms. Latimer agrees
8 with some of the things he did. I don't know if you
9 are familiar with it. You're not in that case.

10 MS. LATIMER: No dog on that one. I
11 don't care how the plaintiffs' lawyers get paid.

12 THE COURT: Well, I will be glad to take
13 a look at that. I think you are right. My view is that
14 the people that do the labor ought to get the benefit.
15 Somebody at the end that comes in saying me too shouldn't
16 get an undue share. That is common sense. The people
17 that do the work, to the extent there is a reward, at
18 the end of the day get it.

19 Let's take a look at the rest of these
20 notes. What sort of dates can we pick?

21 We have got some mandatory disclosures.

22 What sort of dates do we want to look at?

23 I need to work out some dates.

24 Also in this initial case management
25 order, I would like to get from the plaintiffs' side

1 just a Readers Digest version of your theory of liability
2 and, obviously, each plaintiff is different. I would
3 like to get that in two or three pages.

4 when people do the theory of cases, they
5 hit the printer and out it comes. I would like to get
6 the general theory of your defense, and it is very
7 clearly understood this is a working paper. You're not
8 bound by it. It is going to change as discovery takes
9 place. Just so I get one short -- an idea where you
10 have a short version of their theory of liability and
11 your theory of defenses. You're not set in stone like a
12 pretrial order. It is just for my benefit, to see if I
13 missed anything. I would like to get that incorporated.
14 I like that up front.

15 How about the mandatory disclosures?
16 what kind of time frame do we need on those? Obviously
17 that can be -- more mandatory disclosures involving the,
18 quote, three Tennessee cases and other mandatory
19 disclosures on the MDL broader issue.

20 I don't have a problem setting different
21 dates for different type disclosures.

22 That is something you need to talk about
23 maybe. Maybe we shouldn't try to do that all this
24 morning. I want it incorporated into the order.

25 MR. FLYNN: Has Your Honor had an

1 opportunity to review the case management orders in place
2 in these three cases?

3 THE COURT: I had the opportunity but
4 didn't do it.

5 MR. FLYNN: We actually have a timetable
6 leading to the trial date in November, 2007 set forth
7 in these three case management orders. Granted, they
8 have -- they have to be revised.

9 THE COURT: I didn't read them. I
10 probably should have.

11 MR. FLYNN: Would you like us to confer
12 and propose an order?

13 THE COURT: I think that is probably
14 best. Maybe go ahead and give us some general views.
15 You obviously think November, '07, some time in that
16 time frame is reasonable to try one or more of these
17 cases. I guess you all agreed to that back when those
18 were the cases here.

19 Now that we know a little more about it
20 and perhaps it might have been simplified a little bit
21 since we won't have the full class action on it -- maybe
22 you all need to take a look. That would be a good
23 starting point.

24 If you could do something in the next 10

25 days or so on that and then get me a draft order that

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1 incorporates what we use in this district, and using that
2 as a sample would be a good start.

3 MS. LATIMER: We will confer, Your
4 Honor.

5 So the Court is aware, we may well be
6 submitting competing trial dates for your consideration.

7 THE COURT: That doesn't bother me. If
8 that happens the easiest thing to do when you get to that
9 paragraph, plaintiffs have their suggestion and you have
10 yours, and that is why you can send it to me in an
11 electronic form and I can cut and paste and I will pick
12 something.

13 Judge Campbell will set the actual trial
14 date. He may well want to try to hold on to the
15 original dates. I don't think we can say those dates
16 are the ones set right now. When it went MDL, those
17 scheduling orders, if not direct, by implication they
18 have been superseded.

19 MS. LATIMER: I guess I was going to
20 make that observation as well. From our standpoint,
21 from the point MDL was filed a number of people -- we
22 have been in kind of a six month holding pattern.

23 I am not comfortable that the previous
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AREDIS

24 trial date was the --

25 THE COURT: We have lost a certain amount

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1 of time because of the MDL. I want to get as early a
2 trial date as practical and the word practical is just
3 that. We have got to have a trial date at some point.
4 I prefer it sooner than later.

5 This is not the rocket docket out of
6 Alexandria.

7 MS. LATIMER: Thank you.

8 THE COURT: I have some friends on that
9 court and they are very proud of it.

10 MS. LATIMER: It is an exciting place to
11 be.

12 THE COURT: We had a judge in east
13 Tennessee that long since is deceased, but he was
14 famous for setting the trial date before the answer
15 was filed. You east Tennessee lawyers are perhaps
16 familiar with Judge Taylor. He set the trial date before
17 the answer was filed.

18 You would call a witness and he would
19 ask the witness three questions on the stand and then
20 dismiss the witness.

21 You have tried cases up there, haven't

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AREDIA

22 you?

23 MR. FLYNN: I have. He would tell you to
24 pick your two best witnesses.

25 THE COURT: Obviously, we will have, I am

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1 sure, all sorts of experts in this case. And those are
2 issues that you need to address in the scheduling order
3 as much as you can.

4 One of the issues you will need to take a
5 look at, traditionally you kind of close discovery out
6 and disclose experts. Whether or not some experts need
7 to be disclosed before we close discovery or set
8 discovery and then experts after that, I am flexible on
9 that.

10 You know more about the likely scenario
11 that will follow in this case.

12 To the extent we get into affirmative
13 defenses, I am a believing who has the burden of proof
14 goes first on the experts as far as disclosure. I am
15 sure you all have some experts lined up and under
16 contract, or whatever.

17 We need to get that expert provision
18 in. Some of our judges say you can't file a parallel
19 motion for summary judgment. Judge Campbell doesn't
20 have that rule.

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AREDIA

21 Motions can be filed at any time.
22 If you start getting just a tremendous
23 amount of piecemeal motions, he will put a stop to it or
24 tell me to. Sometimes there are motions like you
25 mentioned, one that needs to be filed early perhaps.

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1 when we put a deadline in for motions
2 that doesn't preclude it from being filed earlier.
3 I normally allow 28 days and replies are
4 14 days.

5 Our local rules are 25 pages. Again,
6 that is not set in stone. If the parties need more, we
7 can certainly expand that.

8 I normally keep replies to five pages.
9 It takes a awful lot to convince me to have it more.
10 You have to quit writing sometimes and let the judge
11 decide it.

12 Again, if there is a necessity for pages,
13 I think we can put page limits in subject to the approval
14 of the Court.

15 Some cases need more time. These cases
16 are complex. I can see that 25 pages might be
17 inadequate. I like to keep things as short as I can.
18 Mark Twain apologized to a friend for writing I am

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19 story and said I didn't have time to write a shorter
20 letter.

21 Let's keep it reasonable.

22 Mr. Flynn, I looked at them before but
23 it has been some time back. I should have looked at it
24 last night.

25 MR. FLYNN: I don't think so. With us

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AREDIA

18 clear answer as to when we are going to get these in a
19 usable format.

20 We can literally almost do nothing from
21 a substantive basis.

22 I heard protocol discussed. I would just
23 like to know when. She has to answer that. I don't --

24 THE COURT: I heard her say fairly
25 quickly.

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1 Can you put something on fairly quickly?

2 MS. LATIMER: Assuming we can get a
3 direction on the protocol and protective order, fairly
4 quickly is where I was.

5 I am uncomfortable when I talk about five
6 million pages or three million pages.

7 THE COURT: I am terrified.

8 MS. LATIMER: I am saying a few weeks.
9 I am comfortable on a rolling basis. If we can get an
10 agreement on those things, particularly starting the
11 production as quickly as two weeks.

12 I can't complete the production of that
13 many millions of pages of documents, Your Honor.

14 THE COURT: I think a rolling production
15 certainly can be done. I am not a fan of waiting until

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16 everything is done. AREDIA I think a rolling production gets
17 people started.
18 You have a protective order to come up
19 with fairly quickly. You have your protocol to discuss
20 with them. I would like to see us get started, if you
21 have stuff ready, in a couple weeks.
22 I would like to see it done in a couple
23 weeks.
24 If it goes much over 30 day, I need to
25 get kind of more involved in the process.

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1 MS. LATIMER: I will make sure it
2 happens.
3 THE COURT: Does that help?
4 MR. KELLY: It does. I want to know --
5 until we get it the deadlines will be meaningless. We
6 can't talk to experts until we get them. It could roll
7 into December.
8 They have had a lot of time to get
9 things ready and they know we want to look at them.
10 we signed confidentiality orders months ago. I don't
11 see that as an impediment.
12 We can't do anything until we get the
13 documents.
14 THE COURT: I understood some will be
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AREDIA

15 within two weeks and the rest within 30 days or so.
16 That is what I am getting at.

17 If it goes beyond that, I will start
18 saying what is the hold up.

19 MS. LATIMER: I don't think they will be
20 able to keep up with the production once we can get it
21 rolling, Your Honor.

22 THE COURT: The old saying, be careful
23 what you ask for. I have seen dump trucks. I did it
24 with grand jury subpoenas they drove up with dump trucks
25 to the building.

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1 MS. LATIMER: That is not our plan.

2 THE COURT: It is a lot of stuff. I
3 hope again you will have an electronic form that is
4 searchable and will work. I like all that.

5 MS. LATIMER: I think we are heading to
6 the right place. I don't want to fight about things
7 that haven't happened yet.

8 THE COURT: Mr. Kelly, I have it as a
9 couple weeks, 30 days. If it goes beyond that, you
10 have my phone number. I won't answer until the 14th.

11 Mr. Flynn, that will give you some liaison
12 to work with there.

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13 AREDIA
I am trying to check my notes.
14 Is there anything else that you can think
15 of that we need to do now?
16 Very clearly, I am lifting discovery as
17 we speak now on the Tennessee cases and to whatever
18 extent there is an agreement left in discovery as to
19 what is necessary for MDL. Certainly that goes both
20 ways.
21 Novartis is entitled to get their
22 requests out and you will be submitting this after
23 this questionnaire and such, and obviously the
24 plaintiffs will have or should have read and released all
25 their medical records and such.

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1 We are not going to start depositions of
2 just plaintiffs in general until we address that
3 specifically.
4 I am sure I forgot about 40 things and
5 as soon as we recess, I will think of ten of them that
6 I wish I would have said something.
7 Let me give you a last chance. What
8 else do we need to do?
9 The ideal thing I want is the draft
10 scheduling order to me, in what did I say, two weeks
11 or 10 days? Let's make it two weeks.

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AREDIA

12 You have the 4th and we are almost at
13 the weekend. Let's go with two weeks.

14 MR. FLYNN: That seems premature to me.

15 I am trying to listen to Your Honor while
16 Mr. Kelly talking to me.

17 THE COURT: There is nothing worse than
18 having somebody pull on your coattails when you are
19 trying to think.

20 MR. FLYNN: Could I speak to him for a
21 minute?

22 THE COURT: Sure.

23 MR. FLYNN: Your Honor, I don't think
24 there are any other things. There is probably a myriad
25 of things to discuss. We will put that in an order and

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1 may be back to see you in a few weeks.

2 THE COURT: I can do things over the
3 telephone, record the calls. I don't record -- I think
4 this case, if we have a telephone conference, I can
5 record it.

6 Any time I have a telephone conference,
7 I will record it and if somebody wants a transcript,
8 they can make arrangements with the appropriate people
9 to get it.

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10 AREDIA
I am sure we will have some
11 conversations. I try to get as quick as I can to the
12 scheduling order. To the extent there are competing
13 deadlines, I will look at that and I will sign the
14 matter and then send it to Judge Campbell for a trial
15 date.
16 Again, understanding there may be real
17 issues as to what cases -- we have a trial day -- that
18 is fine that we have time to do it. We have something
19 to start with.
20 Just an aside in this thing, obviously
21 I would like an idea what would be the best estimate
22 or guess of length of one of these trials if we tried
23 one of these cases with a few plaintiffs.
24 Anybody have a guess what the trial
25 length would be? Are we talking about two weeks, three

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1 weeks, six week, two days?

2 MR. GERMANY: Based upon what I know now,
3 probably five million documents, I would think the
4 plaintiffs can put their case on probably within five
5 days, maybe six.

6 THE COURT: Okay. Of course, you don't
7 know what their case is going to be per se. I am not
8 holding you to this.

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9 A rough idea?

10 MS. LATIMER: Based upon what I know
11 now, I disagree with that assessment on the plaintiffs'
12 case.

13 THE COURT: You think longer?

14 MS. LATIMER: I do. I think it would
15 be a better use for planning purposes for the Court if
16 we recognize that the Court will go three, four weeks
17 on the first trial. A later trial may be a little
18 quicker.

19 That is my estimate.

20 THE COURT: I am probably sort of the
21 view that the first time through will take a long time.
22 To the extent there is a second trial, it would go
23 quicker because a lot of the issues -- you would know
24 the rulings and things would be streamlined and one
25 side would be trying to change the strategy and the

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1 other side would try to keep the same strategy and
2 beef it up.

3 I think three to four weeks overall is
4 not a bad estimate. I know Judge Campbell tried one of
5 the intellectual property cases involving music and I
6 think they told him five days and it went ten.

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AREDIA

7 So, I would rather have him think it is
8 potentially three or four weeks and it would take two
9 or three. I would rather overestimate than
10 underestimate.

11 I think probably for the estimate three
12 or four weeks. Who knows at this point. When it
13 starts it starts and once he starts it he will continue
14 it.

15 I think we have made some progress today
16 and I think, obviously, counsel are going to represent
17 their clients vigorously in this matter and both sides
18 feel they have merit to their positions. But it looks
19 to me you all are going to get along as can be expected
20 in this.

21 My view is that counsel should disagree
22 about the case but shouldn't be disagreeable among
23 themselves. One judge said, counsel, go have a good
24 drink after the case is over. I suggest maybe a good
25 lunch anyway.

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1 Anything I can do to assist to make it
2 easier for you, I will try to do it. I will try to
3 move things along as best I can.

4 My marching orders are, try to get the
5 case prepared and move on as quickly as I can. I will

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AREDIS

6 try to do it with your all's assistance.

7 It is not my particular field of
8 expertise. I think I am noted for trying to move
9 things along.

10 I kind of take a common sense approach.
11 If something makes sense, I try to go with it. If
12 something supports me, I am sure they will find that
13 case that supports me.

14 I don't write long opinions. I will
15 decide it and if somebody wants to go up then the Court
16 of Appeals gets paid -- they have more law clerks than
17 I do.

18 with that in mind, if anybody else has
19 anything to bring up, let me know.

20 I will put down an order on this one
21 case that didn't show -- and I need to make sure I have
22 that number. That is 394. We don't have an attorney.

23 MS. LATIMER: Ingram.

24 MR. FLYNN: It was, Your Honor.

25 THE COURT: I have Ingram, 394. I don't

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1 want to shoot the wrong person without finding out what
2 the problem is. I am surprised -- I thought I was
3 pretty clear in the order designating somebody to be

AREDIA

4 here.

5 None of you all are claiming you have been
6 designated?

7 All right. Going once. Sold America.

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REPORTER'S CERTIFICATE

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I, John W. Tummel, Official Court Reporter for
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AREDIA

3 the United States District Court, Middle District of
4 Tennessee, with office at Nashville, hereby certify that
5 I recorded on the Stenograph Shorthand Machine the
6 proceedings held in open court on June 29, 2006, in the
7 matter of: AREDIA AND ZOMETA PRODUCTS LIABILITY
8 LITIGATION; Nashville Civil Case No. 3-06-01760; and that
9 the proceedings in connection with this hearing were
10 reduced to typewriting under my supervision; and that the
11 foregoing is a true and correct transcript of the same.

12

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This the 5th day of July, 2006

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/s/John W. Tummel

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Official Court Reporter

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